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IN THE HIGH COURT OF JUDICATURE AT
BILASPUR (CHHATTISGARH)

Cr. Appeal No. 483... of 2001

APPELLANT/
ACCUSED
(IN JAIL)

BASANT KUMAR , AGED 21 YEARS, SON OF SHRI SANT RAM YADAV, RESIDENT OF VILLAGE - MOHKAM, POLICE STATION - TUMGAON, DISTRICT - MAHASAMUND (CHHATTISGARH)

31.5.01
Vinod Tiwari Advocate
For Appellant

VERSUS

RESPONDENT

THE STATE OF CHHATTISGARH THROUGH - POLICE STATION TUMGAON, DISTRICT-MAHASAMUND (CHHATTISGARH)

MEMO OF APPEAL

MEMO OF CRIMINAL APPEAL UNDER SECTION 374
CODE OF CRIMINAL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

Cr. A. No. 483/

मामला क्रमांक ..... सन् 2001

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

27.02.2006

Shri Y.C.Sharma, learned counsel for the appellant.

Shri U.K.S. Chandel, learned Panel Lawyer for State.

This matter is listed today for default of appearance of the appellant on 13-12-2004. Shri Y.C.Sharma, learned counsel for the appellant submits that in pursuance to order dated 16-08-2004, the appellant did not furnish bail and continued to languish in jail and therefore could not appear in person before the Court on 13-12-2004.

Shri Y.C.Sharma, learned counsel for the appellant further submits that he does not press this appeal on merits and would argue this appeal only on the question of reduction of the sentence of fine amount since the appellant is a very poor person and he is not in a position to pay the amount of fine.

In view of the prayer made above, this appeal is finally heard on the limited question of sentence.

Brief facts of the case are that on 06-09-2000 at about 8 A.M. when the prosecutrix, a member of the Scheduled Tribe aged about 15 years was returning home from the forest with Bhanmati & Dularin Bai, the appellant caught hold of the prosecutrix and forcibly taking her towards the forest

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed rape on her. The evidence of the prosecutrix PW-1 stood the test of cross-examination and inspired confidence. Besides, it was also corroborated by the testimony of Dularin Bai PW-7 and also by the medical evidence i.e. the testimony of Dr. Smt. Alka Pardal PW-12. On the basis of such reliable, legal and unimpeachable evidence, the appellant was convicted under Section-376 IPC for committing rape on the prosecutrix on 06-09-2000 in Village-Mohkam and was sentenced to R.I. for 7 years and fine of Rs.5000/- and in default of payment of fine to undergo additional R.I. for 6 months. The learned trial Judge while awarding the sentence of fine amount of Rs.5,000/- also directed that the amount of fine be given to the prosecutrix as compensation after the period of appeal.

Shri Y.C.Sharma, learned counsel for the appellant argued that the appellant is a very poor person and is in jail from 23-09-2000 to 17-10-2000 and thereafter from the date of judgment 24-02-2001 till date. It was further argued that the appellant would soon be completing the substantive sentence of imprisonment, therefore, in view of the poverty of the appellant, leniency be shown for reduction of sentence of fine amount.

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Shri U.K.S.Chandel, learned counsel appearing for the State has opposed the prayer.

Having heard rival contentions and considering the facts and circumstances of the case, I am not inclined to reduce the sentence of fine amount imposed on the appellant. However, in my considered opinion, ends of justice would be served if the appellant is sentenced to undergo R.I. for 3 months in default of payment of fine.

In the result, the appeal is partly allowed. The Conviction of the appellant under Section-376 IPC and the substantive sentence of rigorous imprisonment for 7 years and the sentence of fine amount are maintained. However, so far as the sentence awarded to the appellant in default of payment of fine is concerned, it is reduced to rigorous imprisonment for 3 months.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane

[पीछे देखिये